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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/925,861      | 08/09/2001  | David E. Richardson  | 10002169-1          | 3808             |

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EXAMINER

WALSH, JOHN B

ART UNIT

PAPER NUMBER

2151

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/925,861 | <b>Applicant(s)</b><br>RICHARDSON, DAVID E. |  |
|                              | <b>Examiner</b><br>John B. Walsh     | <b>Art Unit</b><br>2151                     |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11-17 and 19-24 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-17 and 19-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: loads a probe in said first electronic device (claims 1, 8 and 17).

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-8, 11-17 and 19-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 8 and 17 recite the limitation "the third electronic device...loads a probe in said first electronic device." The specification does not disclose or teach a probe.

Claims 1-8, 11-17 and 19-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 1, 8 and 17

Art Unit: 2151

recite the limitation “the third electronic device...loads a probe in said first electronic device.”

The specification does not disclose or teach a probe.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-8, 11-17 and 19-24, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,571,285 to Groath et al.

As concerns claim 1, an electronic network comprising: a first electronic device (a first electronic device on the network) associated with a second electronic device (a second electronic device on the network), said association providing for the transfer of data between said first electronic device and said second electronic device; a third electronic device (a third electronic device on the network), wherein said third electronic device: loads a probe (software for monitoring) in said first electronic device, wherein said probe causes said first electronic device to: transmit data to said second electronic device (data sent from device one to device two during monitoring of the devices), measure the response time of data transfers between said first electronic device and said second electronic device (during monitoring response time measured, column 1, line 21), and transmit said response time to said third electronic device (third electronic device receives data since it is doing the monitoring, the data needs to be sent back in

Art Unit: 2151

some form so the user doing the monitoring will be aware of an alarm, column 10, lines 26-30); compares the measured response time (1004) to a preselected response time; and provides an indication (1006) if said measured response time greater than said preselected response time.

As concerns claim 2, wherein said first electronic device is a computer (computer on the network).

As concerns claim 3, wherein said third electronic device establishes said preselected response time (user using the third electronic device establishes the preselected response time).

As concerns claim 4, wherein said third electronic device is a computer (column 3, lines 52-61).

As concerns claim 5, further comprising at least one fourth electronic device (a fourth electronic device on the network) operatively connected between said first electronic device and said second electronic device, and wherein said response time is a plurality of response times between said first electronic device and said at least one fourth electronic device and between said at least one fourth electronic device and said second electronic device (time to go from said first electronic device to said second electronic device includes the time to go through the fourth device since it can be between the two device, the network parameter selected to monitor the particular response time).

As concerns claim 6, wherein said third electronic device measures response time of data transfers between said first electronic device and said second electronic device and compares the measured response time to said preselected response time at preselected time intervals (poll rate, column 32, line 59).

Art Unit: 2151

As concerns claims 7 and 13, wherein said indication includes said measured response time (302).

As concerns claim 8, a computer network comprising: a first computer (a first computer on the network) associated with at least one first electronic device (a first electronic device on the network), the association providing for the transfer of data between said first computer and said at least one first electronic device; a second electronic device (a second electronic device on the network) connected to said first electronic device; said first computer having a computer-readable medium (figure 1) associated therewith, said computer-readable medium containing instructions for controlling said first computer to monitor said network by: loading a probe (software for monitoring) in said first electronic device, wherein said probe transmits data to said second electronic device (data sent from device one to device two during monitoring of the devices), measures the response time of data transfers between said first electronic device and said second electronic device (during monitoring response time measured; column 1, line 21), and transmits said response time to said computer (third electronic device receives data since it is doing the monitoring, the data needs to be sent back in some form so the user doing the monitoring will be aware of an alarm; column 10, lines 26-30); comparing the measured response time (1004) to a preselected response time; and providing an indication (1006) if said measured response time is greater than said preselected response time.

As concerns claim 11, wherein said computer-readable medium further comprises instructions for displaying a graphical representation of said network, wherein the portion said network causing said measured response time to exceed said preselected response time is

Art Unit: 2151

distinguishable from other portions of said representation of said network (abstract, conveyed graphically, also column 178, lines 5-7 ).

As concerns claim 12, wherein said instructions further measures said response time and compares said response time said preselected response time at a preselected time interval (1004).

As concerns claim 14, wherein said indication includes said preselected response time (1006, claim 6 and claim 8 (columns 178 and 179)).

As concerns claim 15, further comprising at least one third electronic device (a second electronic device on the network) operatively connected between said first electronic device and said at least one second electronic device.

As concerns claim 16, wherein at least one third electronic device is a router (network has routers, column 31, line 20).

As concerns claim 17, a method for monitoring a computer network said method comprising: loading a probe (software for monitoring) in a first electronic device (an electronic device on the network), said first electronic device being a network device, wherein said probe causes said first electronic device to transmit data to at least one second electronic device (data sent from device one to device two during monitoring of the devices), wherein said probe measures the response time of data transfers between said first electronic device said at least one second electronic device (during monitoring response time measured, column 1, line 21), and wherein said probe transmits said response time to a computer; establishing (1002) a preselected data response time between said first electronic device and at least one second electronic device; comparing (1004) said preselected data response time to said actual data response time; and

Art Unit: 2151

providing an indication (1006) said actual data response time is greater than said preselected data response time.

As concerns claim 19, wherein said providing an indication comprises providing an indication to said computer if said actual data response time is greater than said preselected data response time (1006).

As concerns claim 20, wherein said at least one first electronic device is a router (network has routers, column 31, line 20).

As concerns claim 21, wherein said one first electronic device is a computer (network has computers such that the first electronic device is a computer).

As concerns claim 22, wherein said measuring and said comparing are performed at preselected time intervals (poll rate, column 32, line 59).

As concerns claim 23, wherein said providing an indication further comprises providing said measured response time (302).

As concerns claim 24, wherein said providing an indication further comprises providing said preselected response time (1006, claim 6 and claim 8 (columns 178 and 179)).

### ***Response to Arguments***

5. Applicant's arguments filed February 10, 2005 have been fully considered but they are not persuasive.

The applicant's argument that Groath et al. '285 do not disclose loading of a probe is not persuasive. Groath et al. '285 disclose the limitation, as best understood (see rejection above).

Furthermore, the applicant's disclosure does not disclose loading of a probe.



***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

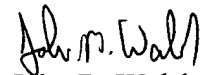
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 703-305-0444. The examiner can normally be reached on Monday-Friday from 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 703-308-6687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2151

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John B. Walsh  
Primary Examiner  
Art Unit 2151